

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 422 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SANDESHAR GRAM PANCHAYAT

Versus

CHIMANBHAI CHUNIBHAI PATEL

Appearance:

MR SR SHAH for Petitioners

MR DF AMIN for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/12/1999

ORAL JUDGEMENT

1. The appellants who are the original defendants have filed this appeal challenging the judgment and decree passed in Regular Civil Suit No. 331 of 1973 confirmed in appeal being Regular Civil Appeal No.187 of 1978 by the learned Joint District Judge, Kheda at Nadiad whereby the courts below passed a decree for declaration that the respondent has a right of way through Chara land bearing survey nos. 754 and 825 and thereby restraining

the appellants from interfering, obstructing and using the said way by the respondents. This Court, while admitting the appeal, stayed the implementation and operation of the judgment and decree passed by the courts below. It appears that the respondent filed an application being Civil Application No.1635 of 1991 making a grievance that because of the interim order passed by this Court, he is not in a position to exercise his right of way. This Court on 16.9.1991, passed the following order in the said application.

"Mr.S.R.Shah, learned advocate appearing for the respondents herein states that the panchayat has prepared a way for allowing the present applicant to pass through till the final disposal of the Second Appeal No. 422 of 1981 as per the panchanama dated 8.9.1991 which is ordered to be kept on record.

In view of this statement made by Mr. S.R.Shah, Mr. Amin, learned advocate for the applicant seeks permission to withdraw the present application. Permission to withdraw granted. Disposed of as withdrawn."

2. During the course of hearing of this appeal, Mr. Amin, learned advocate for the respondent herein stated that in pursuance of the order passed by this Court in the aforesaid Civil Application No.1635 of 1991, the respondent is using the passage provided by the panchayat under the panchanama towards northern side of the disputed land and if the appellant panchayat permits him to use the passage as per the statement made in the said application, the respondent will not use the land under the decree passed by the courts below. In other words, the respondent has shown his willingness to forgo his right of passage through the disputed land provided he is allowed to use the passage as per the panchanama dated 8.9.1991. Mr. S.R.Shah, learned advocate appearing for the appellants agrees to the aforesaid suggestion of Mr. Amin. In this view of the matter, the following order is passed.

The appellants will permit the respondent, use of passage as per the panchanama dated 8.9.1991. The respondent will not use his right of way through the Chara land bearing survey nos. 754 and 825. In view of this, Second Appeal is disposed of. Decree to be modified accordingly. No order as to costs.

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